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No. 90-1912

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondents object to Petitioner's statement of the QUESTIONS PRESENTED and submit the following questions which correctly state the issues in this matter.

1. May a State establish a property tax classification system distinguishing between parcels based on the value at the time of acquisition, where such distinction is founded on the legislative policy of providing all owners, in a non-discriminatory manner, with certain, predictable and limited property taxes during the future period of their ownership.

2. Does Petitioner have standing to argue infringement of the constitutionally protected "right to travel" where the record does not support any fact other than that Petitioner resides in the property which is the subject of the petition.

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RESPONDENTS' BRIEF IN OPPOSITION

I.

STATEMENT OF THE CASE

A. BACKGROUND OF THE PROCEEDINGS

In June, 1978, the California electorate approved Proposition 13 by a nearly two-thirds vote, thereby adding Article XIII A to the California Constitution. Popularly known as "Proposition 13", Article XIII A incorporated an acquisition value system of taxing real property.

On September 18, 1989, Petitioner filed this action against the County of Los Angeles and the County

Assessor contending that Proposition 13 failed to meet Equal Protection requirements. The trial court sustained defendants' demurrer without leave to amend. Petitioner appealed to the California Court of Appeal, Second Appellate District, which upheld the trial court decision. Petitioner sought review by the California Supreme Court which denied discretionary review.

B. PETITIONER'S FACTS DISPUTED BY RESPONDENTS

Respondents dispute Petitioner's STATEMENT OF FACTS in her Petition For Writ Of Certiorari. Under "A. Proposition 13's Operation", Petitioner greatly mischaracterizes Proposition 13's actual operation. Article XIII A's Change of Ownership provisions are unique and do not fit within the factual mold of those cases wherein discrimination within a single class has been characterized as the "welcome stranger" doctrine.

Respondents do not dispute the fact that from time to time properties of like current fair market value will be assessed at different values, but Respondents dispute Petitioner's statement that, "new property owners pay property taxes *commonly* 10, 12, 15, 17 and as much as 583 times more than long-time owners." (Emphasis added.) The amount and degree of disparity "common" in California is not a matter of record in this case, and is, in fact, unknown. While Petitioner made an offering in the trial court below of a study which she alleged demonstrated disparities, that study, which is not in evidence in this matter, cannot be considered to prove generally any specific amount of disparity in California. Petitioner's study allegedly analyzed roughly 10,000 recent sales selected by Petitioner's economist. Assuming it was, in fact, objective, it would only have looked at eight tenths of one percent of the 1,200,000 real property

parcels in Los Angeles County. Further, 10,000 parcels is an infinitesimal percentage of the millions of parcels of real property in California. Absent massive statistical research, which, to Respondents' knowledge has not been done by anyone in the United States, the amount and degree of disparities offered by Petitioner as fact are essentially nothing more than conjecture.

With regard to Petitioner's "C. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.", Respondents, for the same reason as stated above (Petitioner's assuming facts not in evidence), object to the numerous factual conclusions and generalizations drawn by Petitioner. Respondents submit that, based on the record, it is improper for Petitioner to, (1) characterize disparities throughout California as having become "especially extreme" or "extremely common"; or (2) characterize new buyers as purchasing because of "marriage, divorce or a change in family size, not because they desire more luxurious accommodations;"¹ or (3) claim that pre-1978 homeowners paid 61% more on their first tax bill than they do today;" or (4) assert that "these dramatic inequities will soon grow even worse . . . residential disparities greater than 26:1 will be commonplace within ten years;" or (5) assert that, " . . . within ten years many new home buyers will be paying 70 to 80 times the taxes of their stay-put neighbors; or (6) assert that, " . . . the greatest beneficiaries of this system are the wealthy."

¹While Petitioner cites the California Court of Appeals decision below for this assertion, the decision below is nothing more than a recitation by the court below of Petitioner's proposed second amended complaint.

Petitioner has, in her statement of facts, piled a "mountain" of self serving factual generalizations and legal conclusions on a "mole hill" sized statistical study which itself is not in evidence.

C. LEGISLATIVE BACKGROUND

Prior to the adoption of Proposition 13 in 1978, property values in California were escalating rapidly. The pre-Article XIII A system of property taxation permitted local governmental units to set a property tax rate without limits. The property tax rate for each local governmental unit was applied to a parcel's current market value. On a microeconomic basis, for an individual parcel of real property, the tax rate for that individual parcel was the sum of the rates established by each local governmental unit overlapping the parcel.

Under this earlier system, the rapid escalation of property values in California, a lack of legal restraints on the power to set tax rates, and the failure of local governmental units to reduce rates in the face of rising property values resulted in many property owners literally being "taxed off their land." This gave rise to California's "taxpayers' revolt", which culminated in the adoption of Proposition 13.

Choosing a microeconomic rather than a macroeconomic approach to tax restrictions, Proposition 13 implemented a balancing of several important goals, which were set forth in the published ballot arguments and official literature surrounding its enactment. Proposition 13 limited real property taxation in California by:

(1) restricting the basic tax rate that can be applied to taxable property to 1% of assessed value;

(2) restricting the assessed value of each parcel to its market value on the date property is acquired or changes ownership and thereafter limiting future inflationary increases to 2% per year until a subsequent change in ownership (thereby preventing the taxation of unrealized paper gains between changes of ownership), and

(3) providing government with a stable but limited level of property tax revenue with increases sufficient to keep pace with inflation through permitted reassessments upon changes in ownership together with the 2% inflation adjustment for parcels not changing ownership.²

Proposition 13 converted California's property tax scheme from a "current market value" system to an "acquisition value" system. (*Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208.)

D. MACY'S CHALLENGE TO PROPOSITION 13

On June 3, 1991, this Court granted a petition for writ of certiorari in *R. H. Macy & Co. v. Contra Costa*

²Cal. Const., Art. XIII A, Sec. 1(a): "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property"

Cal. Const., Art. XIII A, Sec. 2(a): "The full cash value means the County Assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment"

Cal. Const., Art. XIII A, Sec. 2(b): "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent of any given year or reduction as shown in the Consumer Price Index or comparable date for the area under taxing jurisdiction. . . ."

County, No. 90-1603 (the "*Macy's*" case).³ The petition in *Macy's* alleged that the application of the Change of Ownership provision following a management buy-out resulted in a tax rate for its store which was 2-1/2 times the rate for adjacent, competing stores. (Pet., pg. 3.) *Macy's* argued that "[t]he Change of Ownership provision is a simple case of favoring longstanding property owners in the State over newcomers and new competitors. Such favoritism is wholly irrational *as applied to commercial property* and is emphatically not a legitimate basis for discrimination under the Equal Protection Clause. [Citations.]" (*Macy's* Pet., pg. 8, first emphasis added, second in original.) *Macy's* challenged the Change of Ownership provision as being violative of the equal protection and commerce clauses of the Constitution.

The petition in *Macy's* was carefully limited to commercial property. *Macy's* questioned whether the State policy justifying the Change of Ownership provision applies to commercial property, where the cost of a tax increase can be passed on to consumers.

II

SUMMARY OF ARGUMENT

Respondents respectfully submit that the property tax classification system in Article XIII A of the California Constitution presents no new or special constitutional issues or important reasons for granting Petitioner a writ of certiorari. The decisions of the California Court of Appeals and the California Supreme Court concerning Article XIII A do not conflict with any applicable

³The *Macy's* case was dismissed on June 28, 1991, under Rule 46.

decision of this Court, including recent decisions cited by Petitioner.

Allegheny Pittsburgh Coal Co. v. County Commission, (1989) 488 U.S. 336, relied on heavily by Petitioner, is distinguishable and there is no legal similarity between *Allegheny Pittsburgh* and Article XIII A.

Allegheny Pittsburgh involved action by a state official (i.e. the local assessor) in conflict with West Virginia law—action constituting a clear aberrational, intentional and systematic undervaluation of property *within a single class* without statutory or regulatory authority. In *Allegheny Pittsburgh* this Court held that *within a single classification*, equal protection requires a reasonable remedy and that it is a denial of equal protection for a state, as the sole remedy, to force the taxpayer to seek to raise the low assessed values of all other parcels to achieve tax equality mandated under state law. *Allegheny Pittsburgh* was an *equal protection "remedy"* case following a long line of such "remedy" cases and not a "*classification*" case. It did not establish any new basis or alter the criteria for review of tax classifications under this Court's long established standards. Nothing in *Allegheny Pittsburgh* compels the conclusion that Article XIII A's Change of Ownership provision is invalid.

Article XIII A's acquisition value system, including its Change of Ownership provision, is supported by a rational basis reasonably related to its purposes and is based on sound public policy. Article XIII A was added by Proposition 13, an initiative measure approved by just under two thirds of California's voters, who acted in response to rapidly increasing property taxes brought about by a highly inflationary California real estate market.

The rational basis for Proposition 13's system of property taxation is a balancing of two important legislative goals—(1) providing certainty, predictability and property tax limitation for each individual property owner and preventing the taxation of paper gains, and (2) providing a stable source of property tax revenue for local government under which revenue growth is limited but sufficient to keep pace with inflation.

There is no federal constitutional requirement that all property tax classification systems must be based on current market value to satisfy equal protection. On the contrary, constitutional tax classifications based on any number of distinguishing criteria abound. The tax classification distinctions employed by California's voters in Article XIII A, in concept, are no different than literally hundreds of tax classifications embodied in federal and state tax statutes. The ability of the states to classify is well established in law and needs no clarification by this Court in this case.

For the Court to adopt Petitioner's logic and invalidate Article XIII A's Change of Ownership provisions, it will be necessary for the Court to eliminate, for all practical purposes, the right of the states to classify, and, in particular, to distinguish between taxpayers based on any element other than current market value. Petitioner's logic, if approved, would seriously hamper the ability of the states, and indeed even the United States, to implement social policy through taxation.

Further, Proposition 13 does not discriminate on the basis of residency. All purchasers of property are treated the same under Article XIII A's classification system, whether they are long-time or short-time California residents, and regardless of whether they were nonres-

idents before, at, or subsequent to the time of purchasing their property. Neither length of residence, lack of residence, nor race, color, age, sex or any other suspect classification is relevant to the amount of tax assessed under Article XIII A.

Petitioner raises a "right to travel" argument, but does not have standing to do so. The record in this case is devoid of any evidence that Petitioner's "right to travel" has been impaired. Petitioner's complaint alleges only that she resided in her property.

In any event, the "right to travel" is not impaired by California's acquisition value system. On the contrary, the Change of Ownership provision of Article XIII A assures property owners that a highly inflationary real estate market will not cause their taxes to rise to exorbitant levels in the future. Every purchaser is assured that his property taxes will not increase by more than 2% per year as long as he owns his parcel. This may be viewed as a strong incentive for nonresidents to establish residence and purchase property in California.

Petitioner also seeks to elevate the length of time a person *owns* property, regardless of residency, to the constitutional equivalent of residency. No authority stands for such a premise.

II

ARGUMENT

A. THE RECORD BELOW DOES NOT PROVIDE AN ADEQUATE BASIS FOR REVIEWING PROPOSITION 13

The *Macy's* case was decided by the trial court and affirmed by the Court of Appeal with the benefit of a detailed study jointly commissioned by *Macy's* and the County of Contra Costa. That study analyzed the

effects of the Change of Ownership provision on property taxes in the County. (*Macy's Petition for Writ of Certiorari*, page 4.)

The record in the instant petition, on the other hand, presents a far different situation. The trial court dismissed Petitioner's complaint after sustaining a demurrer without leave to amend. The Court of Appeal affirmed.

Although Petitioner filed certain statistical information and data in the trial court, and Respondents attached a study to their brief filed in the Court of Appeal, there was no stipulation as to the accuracy or validity of such data, and no trial on the merits.

Respondents thus submit that the record in this matter does not provide an adequate basis to permit a review of Proposition 13.

B. ALLEGHENY PITTSBURGH DOES NOT REQUIRE THE INVALIDATION OF PROPOSITION 13's CHANGE OF OWNERSHIP PROVISION

Petitioner apparently views this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission* (1989) 488 U.S. 336, as an invitation to invalidate Proposition 13. However, in deciding *Allegheny Pittsburgh*, the Court stated at footnote 4:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Propo-

sition 13'. Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A, Sec. 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, *supra*, 488 U.S. 344.)

The distinction between *Allegheny Pittsburgh* and Proposition 13 is clear. *Allegheny Pittsburgh* did not involve a legislatively adopted system of classification. Rather, it involved a clear, aberrational, intentional and systematic undervaluation of property without statutory or regulatory authority. It involved action by a State official directly in conflict with West Virginia State law requirements.

Allegheny Pittsburgh was a *remedy* case, not a *classification* case. This Court was not preventing discrimination based on a system of classification. It was following its long-established rule that, within a single classification, equal protection requires a reasonable remedy. The Court held it was a denial of equal protection for West Virginia to require an aggrieved taxpayer, as the sole remedy, to seek to raise the low-assessed value of all other parcels within the same classification.

This Court acted in *Allegheny Pittsburgh* to uphold the law of West Virginia, more or less acting as, "the final arbiter of State law". (*Cumberland Coal Co. v.*

Bd of Revision (1923) 248 U.S. 23.) In the case at bar, Petitioner requests that this Court *invalidate* the law of California.

The petition in *Macy's* noted that, "it was difficult for the [State of West Virginia] to supply a rational basis for a policy that was, in essence, a mistake. Nothing in the holding of *Allegheny Pittsburgh* implies that it would be impossible for another state—California, perhaps—to supply a rational basis for a method with similar inequalities." (*Macy's* pet., pg 15.)

Respondents respectfully submit that nothing in *Allegheny Pittsburgh* compels the conclusion that Proposition 13's Change of Ownership provision is invalid.

C. CALIFORNIA'S ACQUISITION VALUE SYSTEM MEETS EQUAL PROTECTION REQUIREMENTS

1. The Standard of Review in this Case is the Rational Basis Test.

This Court has long held that a State is to be given great leeway in establishing its system of taxation. (*Kahn v. Shevin* (1974) 416 U.S. 351, 355-356.) Absent a suspect category such as race, color, gender, ethnic origin or absent a category involving a fundamental freedom or political right such as voting and other civil rights, the constitutionality of a tax classification turns on whether the scheme of classification is reasonably rationally related to the purposes for its enactment. Along this line, this Court has established that a disparity must be clearly excessive before it will overturn a tax scheme, since disproportionate extractions of tax revenues from certain individuals or properties have almost always been upheld. (*Fox v. Standard Oil Co.* (1935) 294 U.S. 87; *Dane v. Jackson* (1921) 256 U.S. 89.)

Further, this Court has repeatedly admonished against interfering with a State's fiscal policies under the Equal Protection Clause. (*San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1, 40.) Quoting from *Madden v. Kentucky* (1940) 309 U.S. 83, 84, this Court held, in *Regan v. Taxation with Representation of Washington* (1983) 461 U.S. 540, 547-48:

"... [I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."⁴

In the instant case, the distinction at issue is taxing property on the basis of its value when newly acquired rather than its periodically changing market value. Article XIII A classifies properties solely and totally on the basis of value at the time of acquisition.

In this regard all purchasers of property are treated

⁴Proposition 13 was "enacted" through the initiative process by the electorate, who arguably are even more familiar with local conditions. Under the initiative power, set forth in Article II, Sec. 8 of the California Constitution, the people act as a super-legislature, often using the power as a "legislative battering ram" to achieve reform which the State Legislature has failed to accomplish. (*Amador, supra*, 22 Cal.3d at 228.)

the same under Article XIII A's classification system, whether they be long-time or short-time California residents, or whether they are nonresidents before, at or subsequent to the time of purchasing their property. Neither length of residence within California, lack of California residence, nor race, color, age, gender or any other suspect classification is relevant to the Article XIII A tax system or the amount of tax levied and assessed under Article XIII A.

Consequently, there is no basis for applying any other standard than the rational basis test to determine the constitutionality of Article XIII A.

2. California May Establish A Property Tax Classification System Distinguishing Between Parcels Based On Acquisition Value Where That Distinction Is Founded On A Rational Basis.

In essence, Petitioner argues that all taxes on property must be based on a current market value system to meet the requirements of the Equal Protection Clause. No decision by this Court directly or by analysis establishes such a strict requirement.

The power of states to classify for tax purposes is very broad. Constitutional tax classifications abound. This Court and lower federal courts have sanctioned tax classification distinctions based on geography, *Weissinger v. Boswell* (M.D. Ala. 1971) 330 F.Supp. 615; distinctions based on the nature or use to which property is put, such as differences in the operations of common carriers, *Dixie Ohio Express Co. v. State Rev. Comm'n* (1939) 306 U.S. 72; *Hero Mayflower Transit Co. v. Board of J.R.R. Comm'rs* (1948) 332 U.S.

495; *Bekins Van Lines v. Riley* (1929) 280 U.S. 80; differences in what is being transported, *Alward v. Johnson* (1931) 282 U.S. 509; differences in vehicle use and weight, *Coyne v. Prouty* (1933) 289 U.S. 704; differences in what natural resource is being extracted or produced, *Lake Superior Consol. Iron Mines v. Lord* (1926) 271 U.S. 577; differences in whether property is real property, tangible personal property or intangible property, *Klein v. Board of Tax Supervisors* (1930) 282 U.S. 19; differences based on agricultural versus nonagricultural use, *Clark v. Kansas City* (1900) 176 U.S. 114; differences in leased versus owned property, *Illinois Central v. Minnesota* (1940) 309 U.S. 157; differences in bank charters, *Union Bank & Trust Co. v. Phelps* (1933) 288 U.S. 181; *Commercial Nat'l Bank v. Chambers* (1901) 182 U.S. 556; differences in the purposes for storing merchandise within a state, *Allied Stores v. Bowers* (1959) 358 U.S. 522; *Youngstown Sheet & Tube Co. v. Bowers* (1959) 358 U.S. 534.

Also, this Court has found no fault with taxing individuals differently than corporations or partnerships with regard to the same property, *Lehnausen v. Lake Shore Auto Parts Co.* (1973) 410 U.S. 356; *Barrett v. Shapiro* (1973) 411 U.S. 910; *Lawrence v. State Tax Comm'r* (1932) 286 U.S. 276; *White River Lumber v. Arkansas* (1929) 279 U.S. 692; *New York v. Barker* (1900) 179 U.S. 279; and even though the entities being distinguished as to tax burden directly compete with one another, *Puget Sound Power and Light Co v. Seattle* (1934) 291 U.S. 619.

Finally, state (and federal) tax laws constitutionally distinguish among individuals on a myriad of bases involving state income, inheritance, property, sales and other tax laws. Such distinctions have been sustained so many times they are too numerous to cite.

The deference shown by this Court to the states in permitting tax classifications spans many years. As early as 1890, this Court sanctioned tax classification systems based on "nominal or face value," rather than current market value. (*Bell's Gap Railroad Company v. Commonwealth of Pennsylvania* (1890) 134 U.S. 232.) In 1974, more than 80 years later and after many similar decisions in between, this Court stated:

" . . . state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the federal Constitution. This principle has weathered nearly a century of Supreme Court adjudication" (*Kahn v. Shevan*, 416 U.S. 351, 355.) (Citations omitted.)

Petitioner argues that Article XIII A is unconstitutional because it could have attained the articulated goals of "tax limitation . . . promoting certainty and predictability" and avoiding taxes on "paper profits" without the change of ownership provision, but that this would have "bankrupted local government in the long run." (Petition For Writ Of Certiorari, p.23) Continuing her argument, she maintains that avoiding bankruptcy of local governments or providing "ever increasing property tax revenues to local governments" is insufficient justification for California's property tax scheme since such an argument could be used to support any discriminatory tax. Petitioner's argument ignores the true purpose of the overall property tax scheme of Article XIII A.

California's acquisition value system, including the change of ownership provision which is an integral part

thereof, carries out important economic policy of California.

The California Supreme Court, in *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208 at 231, described Proposition 13 as a measure consisting of four major elements: "a real property *tax rate* limitation (§1), a real property *assessment* limitation (§2), a restriction on *state* taxes (§3), and a restriction on *local* taxes (§4)." (Emphasis in original.) The *Amador* court noted: "Although petitioners insist that these features constitute separate *subjects*, we find that each of them is reasonably interrelated and interdependent, forming an interlocking 'package' deemed necessary by the initiative's framers to assure effective real property tax relief." (*Id.*, emphasis in original.)

In rejecting an equal protection challenge, the Court opined:

"This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1974 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the

then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment. (We leave open for future resolution questions regarding the proper application of Art. XIII A to involuntary changes in ownership or new construction.)" (*Id.*, 22 Cal.3d at 235.)

The Petitioners in *Macy's* explained the tax policy carried out by Proposition 13:

"Our natural reluctance to tax individuals on values embodied in 'unrealized paper gains' is based on the fact that those gains do not translate into money with which to pay the tax, unless the owner sells or mortgages his property. As petitioners have argued throughout this litigation, however, while that argu-

ment might be sufficient to justify the Change in Ownership provision as applied to residential homeowners, it has no rational application to owners of commercial property. Homeowner property is non-income-producing. The owner's income is unrelated to changes in the value of his property. When the value of his home goes up, there is no guarantee that his income will rise with it. In the case of retired persons or others on fixed incomes the problem is particularly severe." (*Macy's Pet.*, pgs 18-19, fn. deleted.)

Proposition 13's acquisition value system, including its Change of Ownership provision, is supported by a rational basis and carries out important and legitimate tax policy. It comports with the requirements of the Equal Protection Clause.

D. PROPOSITION 13 DOES NOT INFRINGE ON THE "RIGHT TO TRAVEL" OR DISCRIMINATE ON THE BASIS OF RESIDENCY

1. Constitutional Residency Requirements Simply Prevent States From Discriminating In Favor Of Their Own Residents.

Justice Brennan has clarified succinctly when residency will create equal protection problems:

"[T]he answer lies in remembering that our Constitution is an instrument of federalism . . . the Equal Protection Clause, among its other roles, operates to maintain this principal of federalism A state cannot be allowed to discriminate in favor of its own residents and

against residents of other states Where a state discriminates against its own, it does no disruption to . . . federalism." *Allied Stores v. Bowers*, 358 U.S. 522, 532 (1959).

Petitioner's Argument neglects the fact that, unlike all the cases she cites, Article XIII A does not directly or indirectly discriminate or distinguish between citizens based on residence. California's acquisition value system differentiates between property purchasers on the basis of the value of their property when acquired. It does so whether the purchasers are long-time residents, new residents, or non-residents.

It need not be determined whether California's system of classification must be justified by a compelling State interest (*Attorney General of N. Y. v. Soto-Lopez*, (1986) 476 U.S. 898, 903), because California's classification is not based on residency, length of residency or the date of residency in California.

2. Petitioner Does Not Have Standing To Argue That Her "Right To Travel" Is Impaired By Article XIII A.

Petitioner's record below does not satisfy her burden of demonstrating actual discrimination against her sufficient to constitute a denial of equal protection. The record does not support any fact other than that Petitioner resides in the property which is the subject of the petition. The record contains no factual evidence indicating in any manner that Petitioner's own specific "right to travel" was impaired. Consequently, Petitioner does not have standing to argue infringement of the "right to travel." *Valley Forge College v. Americans United*, (1982) 454 U.S. 464.)

3. The Record Establishes No Facts Supporting Any Issue On The "Right To Travel."

Petitioner's argument that Article XIII A creates continuing disparities between properties over time cannot be sustained. The record does not establish, as a matter of fact, that in the future properties will continue to increase in value after their acquisition. The record does not establish, as a matter of fact, any growing disparity in values among properties. In fact, recent reversals in the formerly highflying California real estate market tend to negate any assumptions at all about future California property values.

Even under Petitioner's assumption that properties will always increase in value, as parcels change ownership over time, two parcels, X and Y, may be reassessed many times, first with X paying a higher tax, then with Y paying a higher tax, then with X again paying a higher tax, and so on. Over time, the assessed value of each parcel in California is likely to "leap frog" over other parcels of similar value. Nevertheless, each parcel owner will pay tax on an amount that is 100% predictable so long as he owns his parcel (i.e., 1% of the amount paid for the parcel, plus an inflation factor of 2% per year).

While no one can presume that any given parcel will ever change ownership, it is safe to presume that, in the aggregate, all parcels will eventually change ownership and that in the long run over a reasonable period of time equality of taxation for all parcels will be roughly maintained.

In fact, in other states where, unlike California, the law mandates equal taxation on the basis of "current market value," still, no two properties are ever taxed

precisely equally, since this is a virtual impossibility. The difference between California and these other states is in how long it takes to achieve rough, relative equalization of the overall tax burden. There is nothing in the record before this Court on this point that is anything more than pure speculation. In the absence of clear proof to the contrary, this Court should not ascribe any degree of permanent inequality to Article XIII A.

4. The "Right To Travel" Is Not Impaired By Article XIII A.

A State law infringes on the "right to travel" when it actually deters travel, or when it implements a classification which serves to penalize the exercise of that "right to travel." (*Soto-Lopez, supra*, 476 U.S. at 904.)

Amador rejected a "right to travel" challenge to Article XIII A. The California Supreme Court in *Amador* noted that the property tax system prior to enactment of Article XIII A arguable might have deterred people from purchasing property in California and relocating to California because of the unpredictable nature of future tax liability in California's then inflationary real estate market. Arguably, "the right to travel" is inhibited more by current market value property tax systems with no cap on rates or values than under Article XIII A, which established a more fixed and stable measure of property taxation. (22 Cal.3d at 237-238.)

Petitioner postulates that somehow the length of time a person *owns* a parcel of property, regardless of whether they be short- or long-time residents or nonresidents, is to be elevated to the constitutionally protected category of length of residency (Petition For Writ Of

Certiorari, pp. 27, 28 & 29). But no authority, cited by Petitioner or otherwise, creates such a constitutional equivalency between property ownership and residency or between length of property ownership and length of residency.

Zobel v. Williams (1982) 457 U.S. 55 does not support Petitioner. Confronted with a huge windfall from Prudhoe Bay oil lease revenues, Alaska paid a dividend to each adult resident based on one unit for each year of residency in Alaska after 1959, the year Alaska became a state. Unlike Article XIII A's change of ownership provision where a property's classification changes upon a change of ownership, Alaska's classifications were squarely determined and permanently fixed forever based on length of residency. *Zobel* offered no opportunity for a new resident to ultimately achieve a higher relative benefit through the passage of time or at the occurrence of a subsequent event. The relative percentage of benefit for each individual could never change. In fact, *Zobel* involved a law passed in 1980 which established a permanent classification and payment amount based on length of residency retroactively back to 1959.

Justices Brennan, Marshall, Blackmun and Powell, concurring in *Zobel*, stated: "We rejected . . . most forms of discrimination based on length of residence when we adopted the Equal Protection Clause." (457 U.S. 55 at 71.)

Unlike *Zobel*, Article XIII A involves a continuing system of taxation where a long-time resident, upon a subsequent purchase of property, would be taxed higher (on a current fair market value basis) than newer residents owning property.

Hooper v. Bernalillo County Assessor, (1985) 472 U.S. 612, involved a New Mexico annual property tax exemption of \$2,000 for Vietnam veterans provided they were residents of New Mexico before May 8, 1976. Again, eligibility for exemption was determined, permanently and forever, once and only once, with no opportunity for a post-May 8, 1976 resident to gain eligibility. Since the rational basis articulated for the provisions was to encourage Vietnam veterans to move to New Mexico, this Court concluded that, "The [New Mexico] legislature cannot possibly encourage veterans to move to the State by passing such retroactive legislation." (472 U.S. 612, at 619).

Although this Court has determined that residence is one of the distinctions that in general may not be the linchpin on which a tax or other classification makes a material distinction (*Zobel*, 457 U.S. 55, at 71), such determination, as a legal and practical matter, cannot extend to eliminate all timing and length of ownership distinctions as permissible criteria for proper tax classification.

If, as Petitioner's argument requires, this Court were to declare that all timing and length of ownership classifications are forbidden, how then would all the provisions in various federal and state income tax laws providing for preferential long term capital gains treatment after a specified length of ownership survive? How could any of the multitude of mandated time limits or holding periods under various Internal Revenue Code and state tax provisions avoid constitutional infirmity? The simple answer is they could not.

Respondents thus respectfully submit that Article XIII A neither infringes on the "right to travel," nor discriminates on the basis of residency.

CONCLUSION

For the reasons set forth above, this Court should deny the Petition for Certiorari.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on July 15, 1991, I served the within *Respondents' Brief in Opposition* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 1991, at Los Angeles, California.

Peter G. Sandanavicius
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